

In the Matter of Merchant Mariner's Document No. Z-1143944 and all
other Seamen Documents
Issued to: EDMOND BRUCE TANSEY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1356

EDMOND BRUCE TANSEY

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.11-1.

By order dated 20 April 1962, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation". The sole specification found proved alleged that on or about 11 December 1961, Appellant was convicted by a United States District Court for the Southern District of Texas, a court of record, for violation of a narcotic drug law of the United States.

At the hearing, Appellant voluntarily elected to act as his own counsel. Appellant entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence a certified copy of the judgement and order of probation issued against Appellant by the District Court for the Southern District of Texas. The judgement shows that Appellant, upon his plea of guilty, was adjudged guilty of violating 26 U.S.C.A. 4744(a)(2) to wit: transporting and concealing 1 1/2 ounces of marihuana without having paid the transfer tax impose by law. The District Court, however, adjudged that Appellant was a youth offender and fined him \$250. The execution of the sentence was suspended and Appellant was place don probation for a period of one year, conditioned on good behavior, as provided by 18 U.S.C.A. 5010(a).

In defense, Appellant offered a letter from the U. S. Probation Officer in evidence.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

OPINION

Appellant, on appeal, raises the contention that the order of the Examiner should be set aside because Appellant received a "certificate of no conviction" from the United States District Court for the Southern District of Texas since the order of the Examiner was issued. He relies in effect on 46 C.F.R. 137.04-15(b) which states that an order revoking a seaman's documents "will be rescinded by the Commandant if the seaman submits satisfactory evidence that the court conviction on which the revocation is based has been set aside for all purposes". I have interpreted this section to mean that the conviction must be unconditionally set aside for all purposes. See Commandant's Appeal Decisions Nos. 852, 1223. The basic issues involved in this appeal are, therefore, twofold: is the evidence submitted by Appellant satisfactory within the meaning of section 137.04-15(b) and has Appellant's conviction been set aside for all purposes.

Appellant submitted to me a certified copy of a certificate from the United States District Court for the Southern District of Texas stating that Appellant has been discharged from probation prior to the expiration of the maximum period of his probation, and that the judgement of conviction has been set aside pursuant to provisions of section 5021(b), Title 18, U.S. Code, as amended in 1961. A copy of the court order which is attached to the certificate setting aside the conviction states that Appellant "be unconditionally discharged from probation".

A close reading of section 5021(b) leaves little doubt as to its intended purpose. Where a youth offender (under the age of twenty-two) has been placed on probation by a federal court, the court may thereafter, at its discretion, unconditionally discharge such offender from probation prior to the expiration of the maximum period of probation fixed by the court and this discharge acts automatically to set the conviction aside. Since there is no qualifying provision in this law relative to the setting aside of the conviction, the logical interpretation of the clear statutory language is that the conviction is expunged from the record and the person is thereafter treated as if he were never convicted. This is consistent with the reasoning in Tanzer v. United States (C.A. 9, 1960), 278 F. 2d 137, cert. denied 364 U.S. 863 (1960). Therefore, I am satisfied that Appellant has met the requirements of section 137.04-15(b) in that he has submitted a court order to the effect that his conviction has been unconditionally set aside for all purposes.

ORDER

The order of the Examiner dated at Philadelphia, Pennsylvania, on 20 April 1962, is VACATED and Appellant's documents are reinstated.

D. McG.Morrison
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 6th day of December 1962.